



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION GENERAL INFORMATION**

### **Requestor Name**

HOUSTON HOSPITAL FOR SPEC SURGERY

### **MFDR Tracking Number**

M4-15-0043-01

### **MFDR Date Received**

September 2, 2014

### **Respondent Name**

TEXAS MUTUAL INSURANCE COMPANY

### **Carrier's Austin Representative**

Box Number 54

## **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Per the attached Surgery Scheduling Form Dr. Mark Henry deemed the patient's condition a Medical Emergency and with a time sensitivity of Without Delay."

**Amount in Dispute:** \$2,994.34

## **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The documentation from the requestor states on 5/15/14 states, 'The patient has requested that a surgical procedure be performed. This was selected by the patient from among other options including the option of non-surgical management of the problem...' Texas Mutual understands that a medical emergency would be the only option on the table not one among other options. Further, the fact of other options means the claimant elected to take the surgical one. The failure in the documentation is that it does not substantiate how, once the surgical option was selected, it now became a medical emergency obviating the requirement of preauthorization."

**Response Submitted by:** Texas Mutual Insurance Company

## **DISPUTED SERVICES SUMMARY**

Dates of Service	Disputed Services	Amount In Dispute	Amount Ordered
May 15, 2014	Outpatient Facility Charges	\$2,994.34	\$0.00

## **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.305, sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.2 sets out the definitions for General Rules for Medical Billing and Processing.
3. 28 Texas Administrative Code §133.307, sets out the procedures for resolving medical fee disputes.
4. 28 Texas Insurance Code Chapter 1305 applicable to Health Care Certified Networks.

## **Issue**

1. Is the authority of the Division of Workers' Compensation limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305?
2. Did the requestor submit documentation to support that the provisions of Texas Insurance Code 1305.106 were met?
3. Did the requestor submit documentation that meets the definition of emergency per 28 Texas Administrative Code 133.2?
4. Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

## **Findings**

1. The requestor filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307 titled *MDR of Fee Disputes*. Information known to the Division identified the claim involved in this dispute is enrolled in a certified network. The authority of the Division of Workers' Compensation is to apply Texas Labor Code statutes and rules, including 28 TAC §133.307, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305. In particular, TIC §1305.153 (c) provides that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."
2. Texas Insurance Code Section 1305.006, titled, *INSURANCE CARRIER LIABILITY FOR OUT-OF-NETWORK HEALTH CARE* states, "An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee: (1) emergency care; (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract; and (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103."

The Division finds that the requestor has the burden to prove that the condition(s) outlined in the Texas Insurance Code §1305.006 were met in order to be eligible for dispute resolution. The requestor indicates that the disputed services were rendered to the injured employee due to a medical emergency.

3. 28 Texas Administrative Code 133.2 states "The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: (5) Emergency--Either a medical or mental health emergency as follows: (A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in: (i) placing the patient's health or bodily functions in serious jeopardy, or (ii) serious dysfunction of any body organ or part; (B) a mental health emergency is a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person."

Review of the medical documentation submitted by the requestor does not meet the definition of a medical emergency as defined by 28 Texas Administrative Code 133.2, as a result, the requestor has not presented information to the Division to support that the conditions outlined in Texas Insurance Code 1305.006 were met. The Division concludes that the requestor thereby has failed to meet the requirements of Texas Insurance Code Section 1305.106.

4. The Division finds that the requestor failed to prove in this case that the requirements of Texas Insurance Code Section 1305.006 were met. Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307.

## **DECISION**

Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

### **Authorized Signature**

Signature	Medical Fee Dispute Resolution Manager	May 8, 2015 Date
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## **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division, within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form, or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).